

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:
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PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference 2099.00027		Date of mailing (day/month/year) 08 MAR 2007 FOR FURTHER ACTION See paragraph 2 below	
International application No. PCT/US05/03739	International filing date (day/month/year) 07 February 2005 (07.02.2005)	Priority date (day/month/year) 06 February 2004 (06.02.2004)	
International Patent Classification (IPC) or both national classification and IPC IPC: A61B 17/08(2006.01) USPC: 606/151			
Applicant CHILDREN'S MEDICAL CENTER CORPORATION			

1. This opinion contains indications relating to the following items:


- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.
For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201	Date of completion of this opinion	Authorized officer Darwin P. Erez  Telephone No. 703-308-0858
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Form PCT/ISA/237 (cover sheet) (April 2005)

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US05/03739

Box No. 1 Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of:

- ☒ the international application in the language in which it was filed
☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

- ☐ a sequence listing
☐ table(s) related to the sequence listing

b. format of material

- ☐ on paper
☐ in electronic form

c. time of filing/furnishing

- ☐ contained in the international application as filed.
☐ filed together with the international application in electronic form.
☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US05/03739

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

I. Statement

Novelty (N)	Claims <u>6,14-19,25 and 26</u>	YES
	Claims <u>1-5,7-13,20-24,27 and 28</u>	NO
Inventive step (IS)	Claims <u>14-19,25 and 26</u>	YES
	Claims <u>1-13,20-24,27 and 28</u>	NO
Industrial applicability (IA)	Claims <u>1-28</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 1-5, 7-13, 20-24, 27 and 28 lack novelty under PCT Article 33(2) as being anticipated by US 5.366.460 to Eberbach.

Eberbach discloses a deployment device comprising a housing 10 and a placement means 32 having a retracted position within the housing (Fig. 7) and an extended condition from the housing (Fig. 5); wherein the housing includes an insertion end and an opposite end; wherein the housing is a tubular element having a lumen; wherein the placement means is located within the lumen; wherein the placement includes a controlling means 42; wherein the placement means has an outer surface for holding a material in place; wherein the placement means is a loop that can be viewed as an umbrella shaped wire with spires; wherein the placement means is self-expanding; wherein the device is capable of fitting within a trocar.

Eberbach further discloses the method of deploying a patch using the device as shown above, such as, actuating the placement means from a retracted position to an expanded position, wherein the placement means has a material that is placed in a predetermined site, wherein the device is inherently placed inside a trocar, which creates an access hole in the tissues.

Claim 6 lack an inventive step under PCT Article 33(3) as being obvious over Eberbach.

Eberbach teaches all the limitations of the device except for the use of finger-actuated loops. However, it is extraordinarily well known in the art for surgical devices to have finger-loops for actuating the device. Therefore, one of ordinary skill in the art would have found it obvious to add a finger-loop to the device of Eberbach.

Claims 14-19, 25 and 26 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest a deployment device having a placement means that includes gripping elements (wire or suture) that holds the material to an expandable loop.

Claims 1-28 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.